

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHAEL ERALI II

Plaintiff,

v.

TOWN OF ORANGE,

Defendant.

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DOCKET NO. 3:04-cv-30241-MAP

**MOTION IN LIMINE TO PRECLUDE EVIDENCE OF NOT FILING A UNION
GRIEVANCE REGARDING HARASSMENT BY EVELY DALY**

The plaintiff moves in limine to preclude testimony or documentary evidence that Michael Erali did not file a union grievance regarding the sexual harassment he alleges by his supervisor. The defendant may seek to present evidence that Mr. Erali did not file a grievance with his union complaining of the sexual harassment by Evelyn Daly.

It is axiomatic that a plaintiff who is a union member need not file a grievance to vindicate his civil rights. Specifically, a Title VII claim or a claim under M.G.L. c. 151B are not contract based claims or ones which are predicated on rights granted by a collective bargaining agreement and are not precluded or superceded by rights conveyed under a collective bargaining agreement. *See e.g. Emporium Capwell Co. v. Western Addition Community Org.* 420 U.S. 50 (1975); *Blanchette v. Sch. Comm. Of Westwood*, 427 Mass. 176 (1998). The only possible reason for the defendant to offer this evidence is to erroneously show that Mr. Erali did not do something he was required to do or to undermine his claim by showing he did not complain to the union of the harassment he endured. Offering evidence of the grievance procedure or Mr. Erali's failure to avail himself of it does not tend to make his claim that he was harassed by his supervisor more likely true or not. Moreover, under M.G. L. c. 151B there is no requirement that he complain to anyone at all if Mr. Erali proves harassment by his supervisor Ms. Daly.

Finally, Federal Rule of Evidence 403 provides that “although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Even if the Court were to find the fact that the plaintiff did not file a union grievance about sexual harassment by his supervisor was marginally probative, the Court should find that any probative value is outweighed by the certain prejudice and confusion that will inure by presenting this evidence to the jury. The jury may incorrectly conclude that Mr. Erali was required to file a grievance and incorrectly conclude that as a result, his failure to do so is telling. The jury may also confuse the rights and remedies bestowed by the collective bargaining agreement with those civil rights that Mr. Erali is entitled to pursue and for which he may seek a more complete remedy in the Courts.

Dated: February 20, 2007

Respectfully submitted,

PLAINTIFF MICHAEL ERALI II
By his attorney,

/s/ Suzanne Garrow
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CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic File (NEF).

/s/ Suzanne Garrow
Suzanne Garrow